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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [redacted] 5

HARRY H. NEUBERGER,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING AND MOTION TO DEFER CONSIDERATION OF PETITION FOR REHEARING.

JOSEPH M. PROSKAUER,
WALTER MENDELSOHN,
WILBUR H. FRIEDMAN,
Attorneys for Petitioner.

THE COURT PRESS, N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 548.

HARRY H. NEUBERGER,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING AND MOTION TO DEFER CONSIDERATION OF PETITION FOR REHEARING.

This is a petition for rehearing of a petition for a writ of certiorari which was denied by this Court on January 2, 1940.

The reason for this petition is that there is now pending in the United States Court of Claims the case of Central Hanover Bank & Trust Company, Herbert J. Marx and William L. Hernstadt, Executors of the Estate of Leopold Newborg, Deceased, against the United States of America, Docket No. 44896,

which, like the instant case, arises under the 1932 Act.

Both cases involve the question of

(1) The deductibility of individual trading losses against partnership security profits, and

(2) the deductibility of purchase commissions by a trader in securities to the extent that such purchase commissions are paid by the taxpayer to his own partnership and refunded to him.

In the event that the Court of Claims decides either of the above issues in favor of the plaintiff, a conflict will arise, which it is believed would justify this Court in granting certiorari. Rule 33 of this Court's Rules requires petitions for rehearings to be filed within twenty-five days. Said twenty-five days would expire on January 27, 1940. While the Court has power to grant a petition for rehearing of a petition for certiorari notwithstanding the failure to file a petition within the twenty-five day period (*Douglas* v. *Willcuts*, 295 U. S. 722; Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, p. 552), this petition is filed to eliminate any question as to the time element.

Counsel respectfully move that the Court defer consideration of this petition until the decision in the Court of Claims case above referred to.

Authority for deferment of action on this petition may be found in cases where action on petitions for certiorari was withheld pending decisions in other cases in other Courts. *American Surety Co.* v.

Baldwin, 287 U. S. 156, 163; *Michalek* v. *United States Gypsum Co.*, 298 U. S. 639; Robertson & Kirkham, *ibid*, page 559.

No prejudice can result to the Government from the postponement of action on this petition for rehearing since the tax in controversy has been paid.

Respectfully submitted,

JOSEPH M. PROSKAUER,
WALTER MENDELSOHN,
WILBUR H. FRIEDMAN,
Attorneys for Petitioner.

January, 1940.

Certificate of Counsel.

State of New York,
County of New York—ss.:

WILBUR H. FRIEDMAN, being duly sworn, deposes and says:

I am one of the attorneys for the petitioner herein, and am familiar with the facts of this case.

I hereby certify that the foregoing petition for rehearing and motion to defer consideration thereof are not made for the purpose of delay. The petition and motion are filed in good faith in the belief that substantial ground therefor exists.

WILBUR H. FRIEDMAN.

Sworn to before me this
26th day of January, 1940.

MARCIA C. MORSE,
Notary Public.
N. Y. Co. Clk's. No. 246. Reg. No. 0M346.
My Commission expires March 30, 1940.

(Seal)

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